

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Case No. 17-30126 (JB)
MARIA REYNA BARGAS	§	
	§	Chapter 13
Debtor	§	

COMPTROLLER'S OBJECTION TO DEBTOR'S CHAPTER 13 PLAN

(Relates to Doc. No. 20)

The Texas Comptroller of Public Accounts ("**Comptroller**"), appearing through the Texas Attorney General's Office, objects on the following grounds to confirmation of Debtor's *Chapter 13 Plan* ("**Plan**") [Doc. No. 20]:

PLAN OBJECTION

1. The Plan should not be confirmed because it does not provide for the Comptroller's \$554,296.10 priority sales and use tax claim (the "**Comptroller Claim**").
2. Although Debtor's Statement of Financial Affairs discloses a state court lawsuit against her by the Comptroller, the Comptroller is neither scheduled as a creditor nor provided for in Debtor's Plan.

BACKGROUND

3. Debtor was an officer in two corporations, Rancho Las Lomas, Inc. and Rancho Las Ramadas, Inc. Each corporation operated a restaurant. The Comptroller audited both corporations and found they had substantially underpaid their sales tax liabilities. The Comptroller issued fraud assessments against both corporations and the Debtor individually under Tex. Tax Code § 111.0611.

4. The Comptroller subsequently sued the Debtor in state court for the audit liability. A state court judgment was entered in Travis County on September 12, 2013. As of the petition

date in this case, the total amount due under the state court judgments was \$554,296.10. The Comptroller timely filed its proof of claim for the sales tax judgment liability [Claim No. 10].

LEGAL ARGUMENT

5. The Debtor is ineligible for relief under Chapter 13 because 11 U.S.C. § 109(e) provides that only individuals owing less than \$383,175 of noncontingent, liquidated, unsecured debts may be a Chapter 13 debtor. The Comptroller Claim, which is noncontingent, liquidated and unsecured, by itself, exceeds the maximum amount of debt allowed by § 109(e) and renders Debtor ineligible for Chapter 13 relief.

6. Further, the Comptroller Claim is a priority claim under 11 U.S.C. § 507(a)(8)(C). *In re Gulf Consolidated Services, Inc.*, 110 B.R. 267 (Bankr. S.D. Tex. 1989). The Plan must provide for the full payment of the Comptroller Claim as required by 11 U.S.C. § 1322(a)(2).

7. The Comptroller further objects because Debtor will not be able to make all payments as required by 11 U.S.C. § 1325(a)(6). If the Comptroller Claim is added to Debtor's Plan, payments required from Debtor in order to comply with 11 U.S.C. § 1322(a)(2) are beyond Debtor's ability to pay.

8. Under 11 U.S.C. § 1325(a)(1), a Chapter 13 Plan may be confirmed only if "the plan complies with the provisions of this chapter." In this case, the plan is not confirmable because it fails to comply with 11 U.S.C. §§ 1322(a)(2) and 1325(a)(6).

Accordingly, the Comptroller prays that the Court deny Plan confirmation.

Respectfully submitted,

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ATTORNEYS FOR THE TEXAS
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CERTIFICATE OF SERVICE

I certify that on March 10, 2017, a true copy of the foregoing was served by the method and to the following parties as indicated:

By First Class Mail:

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